

**ENTERED**

May 16, 2016

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**NELLER J. JOHNSON,  
*Plaintiff,*

v.

CAROLYN W. COLVIN,  
Acting Commissioner of the Social  
Security Administration,  
*Defendant.*§  
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CIVIL ACTION NO. 4:15-CV-01374

**MEMORANDUM & RECOMMENDATION**

Before the Court is Plaintiff Johnson's application for attorney's fees under the Equal Access to Justice Act, 28 U.S.C. § 2412(d). Dkt. 30. The application was referred to this magistrate judge by District Judge David Hittner. Dkt. 31. Johnson requests \$12,783.56 in fees for her counsel's work in obtaining a fully favorable remand order in this Social Security matter. After reviewing the record and the law, the Court recommends that the fees be awarded as requested.

Section 2412(d)(1)(A) provides for an award of fees and expenses incurred by a prevailing party in proceedings for judicial review of agency action, unless the position taken by the United States was "substantially justified" or "special circumstances make an award unjust." Defendant Colvin does not dispute that Johnson is a "prevailing party" entitled to attorney's fees, nor does Colvin argue that the agency's position was "substantially justified." The lone point of

contention is whether the number of attorney hours to be compensated is excessive. *See* Dkt. 32.

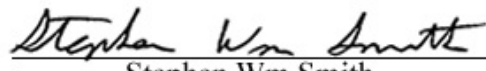
In accordance with § 2412(d)(1)(B), Johnson attached to her motion a detailed itemization of the work performed by counsel, broken into six-minute increments. *See* Dkt. 30-1. Johnson claims fees for 65.8 hours of work, the large majority of which counsel spent researching and preparing a brief in support of summary judgment. Colvin ultimately agreed with the argument presented in the brief that the administrative law judge's denial of benefits was not supported by substantial evidence, and the case was remanded for a fully favorable decision. Dkt. 26–27.

Colvin calls for a reduction to 40 hours and a total award of \$7,528, arguing that counsel's bill of over 60 hours unreasonably exceeds the average of 20–40 hours spent litigating typical Social Security cases. Dkt. 32 at 2. "Where a plaintiff has obtained excellent results," however, "his attorney should recover a fully compensatory fee." *Hensley v. Eckerhart*, 461, U.S. 424, 435 (1983). The "most critical factor" in assessing the reasonableness of the fee "is the degree of success obtained." *Id.* at 436. Here, Johnson's counsel was able to secure a complete victory for his client by submitting a detailed brief that persuaded the agency to agree to a remand and fully favorable administrative decision.

Moreover, the issues presented in the brief are sufficiently complex and unusual to justify an above-average investment of counsel's time. This was not a run-of-the-mill Social Security disability case. Instead, it involved a claim for Social Security retirement benefits based on common law marriage, and it required an understanding of the interplay between Texas family law and federal law concerning the definition and proof of such marriages. Finally, even in regular Social Security disability cases, courts in the Fifth Circuit have approved fee applications for a similar or larger number of hours.<sup>1</sup>

Given the results achieved and the issues involved, Johnson's request for an award of 65.8 hours at an hourly rate of \$188.20, plus the \$400 filing fee, is reasonable. The Court recommends that Johnson be awarded the requested total of \$12,783.56 in fees and expenses.

Signed at Houston, Texas, on May 16, 2016.

  
Stephen Wm Smith  
United States Magistrate Judge

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<sup>1</sup>

*See, e.g., Martin v. Heckler*, 754 F.2d 1262, 1265 (5th Cir. 1985) (approving 122.10 hours); *Goin v. Colvin*, No. 3:12-CV-2471-B, 2013 WL 1797862, at \*5 (N.D. Tex. Apr. 29, 2013) (awarding 79.2 hours at \$185.75/hr); *Taylor v. Colvin*, 3:12-cv-2750-P-BN, 2014 WL 696494, at \*6 (N.D. Tex. Feb. 21, 2014) (awarding 63.2 hours at \$184.86/hr).